

**Testimony of  
Robert S. LaBrant  
Senior Vice President and General Counsel  
Michigan Chamber of Commerce  
on HB 4315  
Before the  
House Committee on Ethics and Elections  
on February 27, 2007**

Mr. Chairman and members of the Committee:

HB 4315 is an attempt to further define what constitutes a “substantial conflict of interest.”

HB 4315 amends a 39 year old law (P.A. 318 of 1968) that was enacted to implement Article IV, Section 10 of the 1963 Michigan Constitution (MCL 15.301-15.310).

Article IV, Section 10 relates to an interest a legislator or state officer has with contracts with the state or political subdivisions.

In P.A. 318 “substantial conflict of interest” is defined in the negative in Section 4(3). For example, there is no substantial conflict of interest found for holding stock of \$25,000 or less by a legislator or state officer. That threshold was enacted in 1968. If we adjust \$25,000 in 1968 to the CPI, it would be \$147,629.31 in 2007 dollars.

HB 4315 establishes a two prong test as to whether a “reasonable person” would find that there is a substantial conflict of interest regarding a legislator and a bill before the legislature.

When I reviewed this bill two thoughts came to mind:

1. If a legislator voted on a bill where he or she had a substantial conflict of interest what would be the penalty?
2. Who enforces violations of this bill?

You don’t find either answer in HB 4315. I suppose you need to look at Sec. 7 of P.A. 318 for those answers.

That section sets up a Legislative Committee on Conflict of Interest. Problem is that the Committee doesn’t exist. Ten House Speakers and nine Senate Majority Leaders since 1968 have never appointed members to that Committee.

In 1989, Attorney General Frank Kelley opined that there is no remedy to compel the legislature to appoint members to the Committee on Conflict of Interest. Section 7 also provides that the penalty for a legislator willfully violating the provisions of the Act is to be subject to the

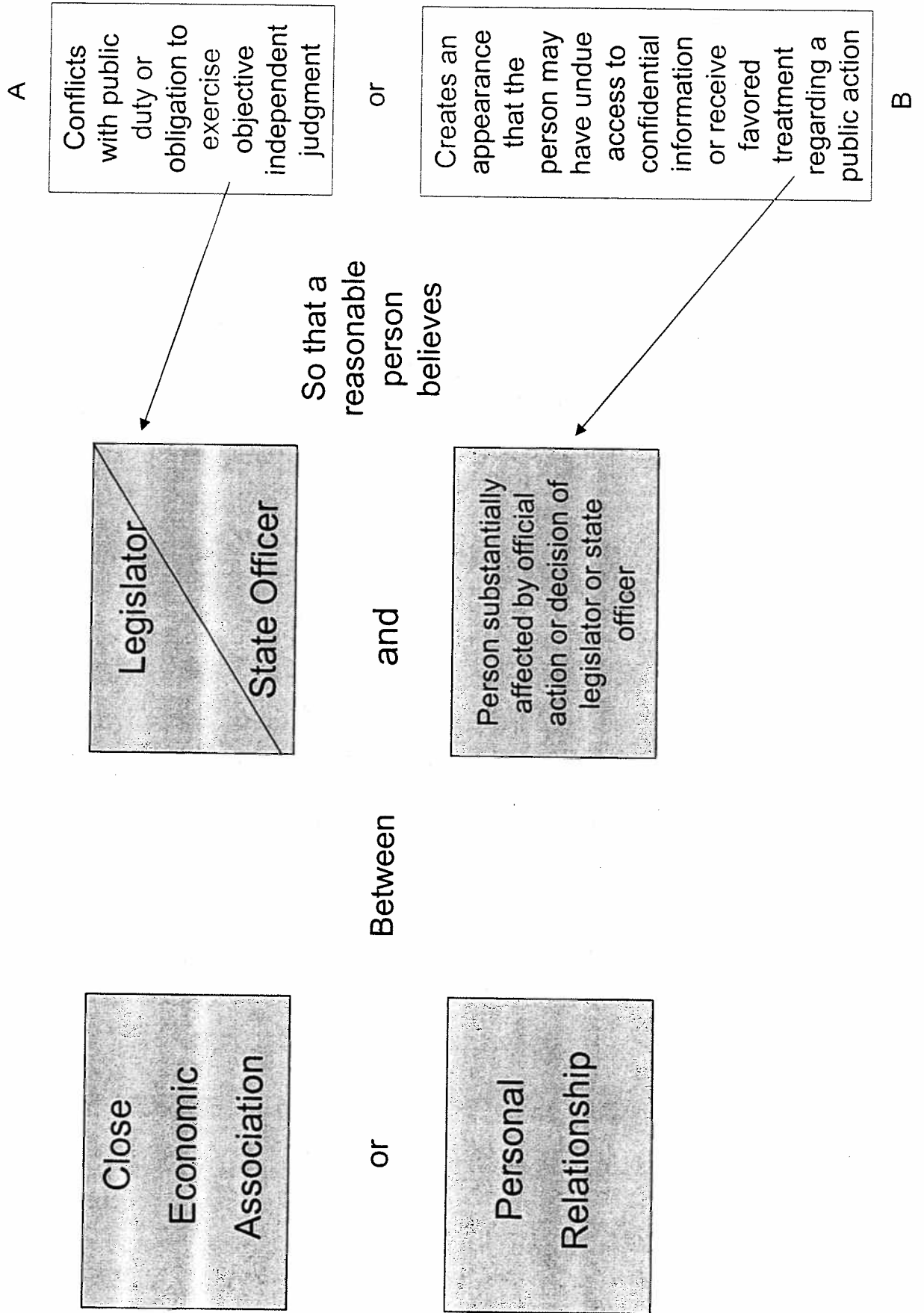
appropriate disciplinary action by the house of which he or she is a member. I suppose that could consist of reprimand, censure or expulsion.

This bill requires a legislator not to vote on a bill if he or she has a substantial conflict of interest. If the intent of this bill is to establish a “substantial conflict of interest” standard for legislative voting that is not related to contracts with the state or political subdivisions, let me suggest an Amendment to the Title of this bill would be required.

This legislation raises a number of questions:

1. Without a statutory definition in the bill, who decides what constitutes a “close economic association.”
2. Would acceptance of a campaign contribution from a lobbyist constitute a “close economic association?”
3. Without a statutory definition in the bill, who decides what constitutes a personal relationship? Is it a spouse, relative, fishing buddy, someone you’ve gone on vacation with?
4. Without a statutory definition in the bill, who decides what constitutes “substantially affected by official action or decision” of a legislator?
5. If a lawmaker has a spouse that is a realtor and a bill to remove the pop-up tax on home sales is before the house, is that lawmaker required to refrain from voting?
6. Where in the Constitution do we find a public duty or obligation that requires a legislator, unlike a judge, to exercise objective independent judgment?
7. Without a statutory definition in the bill, who decides if a public duty or obligation to exercise objective independent judgment has been breached?
8. Without a statutory definition in the bill, who decides whether an appearance has been created that a person has received favored treatment regarding a public action by a legislator?
9. If a person made the maximum campaign contribution to a legislator and that legislator later votes on a bill affecting that contributor, does that constitute creating an appearance of favored treatment regarding a public action?

# "Substantial Conflict of Interest"



**STATE CONSTITUTION (EXCERPT)**  
**CONSTITUTION OF MICHIGAN OF 1963**

**§ 10 Legislators and state officers, government contracts, conflict of interest.**

Sec. 10. No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.

**History:** Const. 1963, Art. IV, § 10, Eff. Jan. 1, 1964.

**Former constitution:** See Const. 1908, Art. V, §§ 7, 25.

## CONFLICT OF INTEREST

### Act 318 of 1968

AN ACT to implement the provisions of section 10 of article 4 of the constitution relating to substantial conflicts of interest on the part of members of the legislature and state officers in respect to contracts with the state and the political subdivisions thereof; to provide for penalties for the violation thereof; to repeal all acts and parts of acts in conflict with this act; and to validate certain contracts.

History: 1968, Act 318, Eff. Sept. 1, 1968.

*The People of the State of Michigan enact:*

#### 15.301 Conflict of interest; purpose.

Sec. 1. This statute is enacted for the purpose of implementing the provisions of section 10 of article 4 of the constitution. Therefore, this act shall be taken into consideration in determining the construction and effect to be given the constitutional section, insofar as the same is constitutionally possible.

History: 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

#### 15.302 Direct or indirect interest in state contracts prohibited.

Sec. 2. No member of the legislature, herein referred to as a "legislator", nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest.

History: 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

#### 15.303 Definitions.

Sec. 3. As used in this act:

(a) The term "state officer" means only a person occupying one of the following offices established by the constitution: governor; lieutenant governor; secretary of state; state treasurer; attorney general; auditor general; superintendent of public instruction; member of the state board of education; regent of the university of Michigan; trustee of Michigan State University; governor of Wayne State University; member of a board of control of one of the other institutions of higher education named in section 4 of article 8 of the constitution or established by law as therein provided; president of each of the foregoing universities and institutions of higher learning; member of the state board for public community and junior colleges; member of the supreme court; member of the court of appeals; member of the state highway commission; director of the state highway commission; member of the liquor control commission; member of the board of state canvassers; member of the commission on legislative apportionment; member of the civil service commission; state personnel director; or member of the civil rights commission; together with his principal deputy who by law under specified circumstances, may exercise independently some or all of the sovereign powers of his principal whenever the deputy is actually exercising such powers.

(b) "Political subdivision" includes all public bodies corporate within but not including the state, including all agencies thereof or any non-incorporated body within the state of whatever nature, including all agencies thereof.

History: 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

#### 15.304 Pecuniary interest; cases in which there is no substantial conflict of interest.

Sec. 4. (1) As used in section 2, "interested" means a pecuniary interest.

(2) If there is a conflict of interest on the part of a legislator or state officer in respect to a contract with the state or a political subdivision of the state, to be prohibited by this act his or her personal interest must be of such substance as to induce action on his or her part to promote the contract for his or her own personal

benefit.

(3) In the following cases, there is no substantial conflict of interest:

(a) A contract between the state or a political subdivision of the state and any of the following:

(i) A corporation in which a legislator or state officer is a stockholder owning 1% or less of the total stock outstanding in any class if the stock is not listed on a stock exchange or the stock has a present market value of \$25,000.00 or less if the stock is listed on a stock exchange.

(ii) A corporation in which a trust, where a legislator or state officer is a beneficiary under the trust, owns 1% or less of the total stock outstanding in any class if the stock is not listed on a stock exchange or the stock has a present market value of \$25,000.00 or less if the stock is listed on a stock exchange.

(iii) A professional limited liability company organized pursuant to the Michigan limited liability company act, Act No. 23 of the Public Acts of 1993, being sections 450.5101 to 450.6200 of the Michigan Compiled Laws, if a legislator or state officer is an employee but not a member of the company.

(b) A contract between the state or a political subdivision of the state and any of the following:

(i) A corporation in which a legislator or state officer is a stockholder owning more than 1% of the total stock outstanding in any class if the stock is not listed on a stock exchange or the stock has a present market value in excess of \$25,000.00 if the stock is listed on a stock exchange or a director, officer, or employee.

(ii) A firm, partnership, or other unincorporated association, in which a legislator or state officer is a partner, member, or employee.

(iii) A corporation or firm that has an indebtedness owed to a legislator or state officer.

(iv) A trustee or trustees under a trust in which a legislator or state officer is a beneficiary or trustee or a corporation in whose stock the trust funds are invested, if the investment includes more than 1% of the total stock outstanding in any class if the stock is not listed on a stock exchange or if the stock has a present market value in excess of \$25,000.00 if the stock is listed on a stock exchange, if the legislator or state officer does not solicit the contract, takes no part in the negotiations for or in the approval of the contract or any amendment to the contract, and does not in any way represent either party in the transaction and the contract is not with or authorized by the department or agency of the state or a political subdivision with which the state officer is connected.

(c) A contract between the state and a political subdivision of the state or between political subdivisions of the state.

(d) A contract awarded to the lowest qualified bidder, upon receipt of sealed bids pursuant to a published notice for bids provided the notice does not bar, except as authorized by law, any qualified person, firm, corporation, or trust from bidding. This subdivision does not apply to amendments or renegotiations of a contract or to additional payments under the contract which were not authorized by the contract at the time of award.

(e) A contract for public utility services where the rates for the services are regulated by the state or federal government.

**History:** 1968, Act 318, Eff. Sept. 1, 1968;—Am. 1994, Act 292, Imd. Eff. July 14, 1994.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.304a Contract arising from status of being both student and member of governing board.**

Sec. 4a. In addition to the cases set forth in section 4, there shall not be deemed to be a conflict of interest with respect to a contract arising out of the status of being a student at an institution of higher education granting baccalaureate degrees or an institution established pursuant to section 7 of article 8 of the state constitution of 1963 where the student is elected or appointed to the governing board of the institution of higher education.

**History:** Add. 1974, Act 317, Imd. Eff. Dec. 15, 1974;—Am. 1976, Act 423, Imd. Eff. Jan. 11, 1977.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.305 Voidability of contracts; procedure; knowledge; limitation on actions; reimbursement; amicable settlement; evidences of indebtedness.**

Sec. 5. (1) This act, following the evident intent of section 10 of article 4 of the constitution, is aimed to prevent legislators and state officers from engaging in certain activities under circumstances creating a substantial conflict of interest and is not intended to penalize innocent persons. Therefore, no contract shall be

absolutely void by reason of this act or the constitutional provision which it implements. Contracts involving a prohibited conflict of interest under this act and said constitutional provision shall be voidable only by decree of a court of proper jurisdiction in an action by the state or a political subdivision which is a party thereto, as to any person, firm, corporation or trust that entered into said contract or took any assignment thereof, with actual knowledge of such prohibited conflict. In the case of a corporation, the actual knowledge must be that of a person or body finally approving the contract for the corporation. All actions to avoid any contract hereunder shall be brought within 1 year after discovery of circumstances suggesting the existence of a violation of the constitutional provision as implemented by this act. In order to meet the ends of justice any such decree shall provide for the reimbursement of any person, firm, corporation or trust for the reasonable value of all moneys, goods, materials, labor or services furnished under the contract, to the extent that the state or political subdivision has benefited thereby. This provision shall not prohibit the parties from arriving at an amicable settlement.

(2) Negotiable and nonnegotiable bonds, notes or evidences of indebtedness, whether heretofore or hereafter issued, in the hands of purchasers for value, shall not be void or voidable by reason of this act or of the constitutional provision which it implements or of any previous statute, charter or rule of law.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.306 Existing contracts; validity.**

Sec. 6. If the state or any political subdivision thereof has, prior to the effective date of this act, entered into any contract under which moneys, goods, materials, labor or services, have been actually received by the state or the political subdivision, which was void or voidable under any act, charter or rule of law because of conflict of interest on the part of a legislator or state officer at the time of the execution thereof, such contract shall be fully enforceable notwithstanding such conflict of interest, by any party thereto other than such legislator or state officer.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.307 Legislative committee on conflict of interest; appointment, duties and powers; prohibitions; violations.**

Sec. 7. There is created a special committee of the legislature on conflict of interest (herein referred to as the committee) to consist of 3 members of the senate and 3 members of the house of representatives, at least 1 of whom from each house shall be a member of the minority party, to be appointed in the same manner as standing committees of the senate and the house. The committee shall have the following duties and powers:

- (a) It shall establish, by majority vote, its rules and procedures;
- (b) Its members shall serve without compensation, but shall be entitled to actual and necessary expenses while on the business of the committee;
- (c) It may, upon the request of any member of the legislature, render advisory opinions to legislators as to whether under the facts and circumstances of a particular case a legislator is interested directly or indirectly in a contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest;
- (d) It may insure that the identity of persons involved in any request for advisory opinions shall not be disclosed in the request, advisory opinion or otherwise.

Any member of the legislature who is licensed as an attorney is prohibited from appearing in any nonadversary or nonministerial proceeding before any state department, office, board or commission of the executive branch of government.

Any member of the legislature willfully violating the provisions of this act shall be subject to appropriate disciplinary action by the house of which he is a member.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.308 Conflicts of interest; state officers, violations.**

Sec. 8. Any state officer willfully violating the provisions of this act shall be subject to appropriate disciplinary action by the governor if he is an administrative officer of the state or if he be a judicial officer of the state, then by the governor on a concurrent resolution adopted by 2/3 of the members elected to and serving in each house of the legislature.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.309 Conflicts of interest; controlling law.**

Sec. 9. All acts and parts of acts in conflict herewith are hereby repealed, it being the intention hereof that the provisions of said section 10 of article 4 of the constitution as implemented by this act, shall constitute the sole law in respect to conflicts of interest involving legislators and state officers in contracts with the state or its political subdivisions.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

### **15.310 Effective date.**

Section 10. This act shall take effect September 1, 1968.

**History:** 1968, Act 318, Eff. Sept. 1, 1968.

**Compiler's note:** Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.



[ [Previous Page](#)] [ [Home Page](#) ]

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 6560

January 20, 1989

LEGISLATURE:

Appointment of members of Committee on Conflict of Interest

No remedy is available to compel the Legislature to appoint members to the Committee on Conflict of Interest established by 1968 PA 318.

Honorable William R. Bryant, Jr.

State Representative

The Capitol

Lansing, Michigan 48913

You have requested my opinion on whether it is mandatory, by statute, for the Legislature to have a Committee on Conflict of Interest. Your question appears to arise from a statute passed to implement Const 1963, art 4, Sec. 10, which provides:

'No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.'

The Legislature implemented Const 1963, art 4, Sec. 10, by enacting 1968 PA 318, MCL 15.301 et seq; MSA 4.1700(21) et seq. In particular, MCL 15.307; MSA 4.1700(27), provides in pertinent part:

'There is created a special committee of the legislature on conflict of interest (herein referred to as the committee) to consist of 3 members of the senate and 3 members of the house of representatives, at least 1 of whom from each house shall be a member of the minority party, to be appointed in the same manner as standing committees of the senate and the house. The committee shall have the following duties and powers:

- (a) It shall establish, by majority vote, its rules and procedures;
- (b) Its members shall serve without compensation, but shall be entitled to actual and necessary expenses while on the business of the committee;
- (c) It may, upon the request of any member of the legislature, render advisory opinions to legislators as to whether under the facts and circumstances of a particular case a legislator is interested directly or indirectly in a contract

with the state or any political subdivision thereof which shall cause a substantial conflict of interest;

(d) It may insure that the identity of persons involved in any request for advisory opinions shall not be disclosed in the request, advisory opinion or otherwise.' (Emphasis added.)

It is clear that a Committee on Conflict of Interest has been established. Your question thus becomes whether the Legislature must appoint members from each house to serve on this committee as 1968 PA 318 contemplates.

Const 1963, art 4, Sec. 16, provides in pertinent part:

'Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected thereto and serving therein from discharging a committee from the further consideration of any measure.'

The Majority Leader of the Senate appoints, subject to approval of a majority of Senators elected and serving, all the members of Senate committees except where the Senate shall otherwise order. Senate Rule 1.105 (1988). The Speaker of the House appoints all House committees except where the House shall otherwise order. House Standing Rule 7 (1988).

In OAG, 1979-1980, No 5548, p 359, 360 (August 17, 1979), it was concluded that:

'[T]he only restriction imposed by the constitution upon the rules of proceedings of a house of the legislature is that neither house may adopt a rule which will prevent a majority of the members of the house from discharging a committee from the further considerations of a measure. There is no other limitation upon the rules of proceedings which may be adopted.

'Rules of proceedings adopted by a house of the legislature may be subsequently set aside by members of the house of the legislature. . . .

'Thus, it is my opinion that the Senate may adopt a rule which requires a standing committee to report out a bill within a specified time period, and that rule may be suspended at will by the Senate.'

While a Committee on Conflict of Interest has been established by statute, there is no remedy available to compel the respective officers of each house of the Legislature to act to appoint members to the committee. See *Turnbull v Giddings*, 95 Mich 314; 54 NW 887 (1893).

It is my opinion, therefore, that no remedy is available to compel the Legislature to appoint members to the Committee on Conflict of Interest established by 1968 PA 318.

Frank J. Kelley

Attorney General

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[ [Previous Page](#) ] [ [Home Page](#) ]

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State of Michigan, Department of Attorney General

Last Updated 02/26/2007 13:33:15